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WOMAN AND THE LAW

A COMPARISON OF THE RIGHTS OF MEN AND THE RIGHTS OF WOMEN BEFORE THE LAW.

BY

RUSSELL H. CONWELL,

AUTHOR OF "WHY AND HOW THE CHINESE EMIGRATE" LESSONS OF TRAVEL," AND "HISTORY OF THE BOSTON FIRE."

BOSTON:

HENRY L. SHEPARD & CO.,

1875.

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DEDICATED

TO

MY AFFECTIONATE BROTHER

AND FAITHFUL FRIEND,

JOHN H. SANBORN,

OF

NEWTON, MASS.

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Boston, July 15th, 1875.

COL. RUSSELL H. CONWELL:

My Dear Sir: — Believing that there are thousands of your auditors who would like to preserve the thoughts contained in your lecture on "Lawyers," and feeling well assured that you could not confer a greater favor upon the reading public than to permit the publication of that portion especially which relates to the inequality of legal rights between men women, I come to ask if I can secure the copyright of such a portion of the lecture as you are willing should be published. * * * * *

Yours fraternally,

LYMAN T. RING.

Boston, July 16th, 1875.

LYMAN T. RING, ESQ:

My Dear Sir: — In answer to your letter of the 15th I would say that, as I never speak from manuscript or notes, I shall be compelled to "write out" the lecture, if I consent to its publication. I hesitate about undertaking the additional labor in view of the great pressure of my professional work, just at this time. If I should determine to furnish you with the manuscript, it must be done in a more hasty manner than the gravity of the subject would seem to demand. * * * * *

Yours, with kind regard,

RUSSELL H. CONWELL.

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PREFACE.

No one, except reviewers for newspapers, whose whole idea of a volume is drawn from this uncertain source, ever reads a preface. It furnishes a cozy little nook into which the snugly ensconced author may hide and say just what he pleases, without danger of discovery. A nice little retreat it is, surely! and the writer has slyly crept into this hiding-place just to talk it all over to himself. Shall the old and worn manuscript be exchanged for type? Will the volume bear the searching criticism of dear friends and respected acquaintances? Will the cause of human equality and the happiness of the race be advanced thereby? Will the distinguished leaders in the Woman's Suffrage Party shout in derision, or will they discover a co-working spirit? What will Mrs. Livermore, or Miss Dickinson, or Mrs. Stowe say about it, if a stray copy should be placed in their laps by the newsboy, when there is nothing else to command their attention? What would those bright angels over there say,

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if they were plain Margaret Fuller and Celia Burleigh again, and had time to read such a book? What will lawyers say, who hate popular books, and admire only Blackstone, Chitty and Greenleaf, and kindred works of purely scientific value? What will the politician say to this theft of his noise?

Well, no matter what all these will say, even though we do love and honor many of them. God knows that the motive is to make one's self useful to the unhappy, and He will not let the power of a good motive die, be it clothed ever so clumsily. It may be that some friendless or defrauded one, somewhere in this great world, will see, herein, a way to regain that which was lost, or secure some great good she never would have thought to be within her reach. Ah! could we realize that the prayer of an idolized one, who asked so often that "the world might be better for his having lived in it," was herein partly answered! Perhaps we may. The Great Father sees us.

Once on a time, in Ormudz, there was a Peri, with tiny feet and glittering wings, who was passionately fond of diamonds. Her crown, drapery,

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and shoes, were solid with the purest gems. She herself appeared at a little distance like a wee dot of a flying diamond. Yet there was one precious jewel which she discovered one day by the river, and which she coveted more than all she had before collected. It was very heavy, and bright as the sun; too heavy for her atomic head, and far too brilliant to be becoming to her. The name of the rare jewel was Somethingmore. Her friends urged her to avoid the display, and warned her against her vain desire to become conspicuous. But she was not content. She thought that she only needed this precious Somethingmore in her crown to make her supremely happy. So she commanded the gem to be set in her crown, and started in a blaze of light to visit her humbler neighbors. But alas! the new jewel was so bright that its fiery rays melted her diamond robes, blistered her feet, and scorched her wings. Soon her crown itself was dissolved by the heat, and she herself fell dead from suffocation. When her sisters found her, Somethingmore had scorched the sward about her; and to this day the people of Ormudz show the barren, ashy hillside, burned and crisped so long ago by the fatal Somethingmore.

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CONTENTS.

I. — WOMEN AND THE COURTS 13

II. — UNMARRIED WOMEN — UNMARRIED MEN 22

III. — WIVES AND HUSBANDS 28

IV. — FUTURUS ESSE 39

V. — THE STUMBLING BLOCKS 45

VI. — FASHIONS AND LAWS 53

VII. — TAXATION WITHOUT REPRESENTATION 64

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WOMAN AND THE LAW.

CHAPTER I.

WOMEN AND THE COURTS.

HAVE you not heard the wail from the land of women? — the half-uttered moan of the over-burdened and oppressed race? If you have not your experience has been like mine. And yet they say there is such a wail, and that there is such oppression. The politician, speaking as one having authority, says he himself has heard the outcries of enslaved women, smarting under the castigation of their male oppressors. The female lecturer, of sparkling intellectual powers, has pictured to us the horrors of that feminine Goshen, with such earnestness and sincerity that we have unhesitatingly accepted her portrayals as truth, and herself as a new Moses. Most excellent writers in womanly literature, speak often, and very touchingly, of woman's wrongs and woman's tears in that Hebridic thraldom which

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exists everywhere else, save in our immediate locality.

Conventions have resolved and re-resolved that woman, somewhere in America, is abused, despised, hated and cursed by that hard and relentless task-master — man. You have heard it discussed by men of genius and women of culture, for whom you have had unfathomed reverence and respect; and they all have heard this wailing, although they did not tell us where. We have become familiar with all the tortures of the Inquisition, all the tyranny of the harem, all the sufferings of the African in America, the Coolies in Cuba and Chili, and the captives in the haunts of North American savages, as those fearfully tragic histories have been drawn upon, again and again, to illustrate the condition of American women. Poor things! How many sad tears have greeted the story of your fate! And how many a noble heart has beat fast and hard at the relation of your woes! Despicable man! How can you, whoever you are, and wherever you may be, maltreat, torture and murder those defenseless and offenseless beings? Why do you not share in their suffering and toil,

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instead of lolling in balmy ease through a life, which, to them, is nothing but pain of body and misery of mind! Oh! could you, aye you! vile man, be swept from the earth at one swoop of the Archangel's wing, how happy and peaceful, painless and laborless would be woman's existence in that mentionless somewhere between the Atlantic and the Pacific shores!

But such an event, desirable as it must be to those down-trodden women in our land, must not now be expected. The world will move on, we fear, much as before, and unless some miraculous revolution come, these awful men will continue to treat each other with courtesy, fairness, generosity and love, while they meet every woman with contumely, deceit, selfishness and hate. Man himself will still be exempt from care, from pain, from poverty, from oppression and wrong, while woman, alas! must bear all these as heretofore, because she is the slave of man. Strange it is that an Allwise Providence should permit these things anywhere. Yet we are sure these statements are true, of some localities, for lo! hath not woman-suffrage conventions repeatedly and solemnly declared them to be so?

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Whatever wrongs woman may suffer more than man suffers, or what pain she may feel that is not common to all mankind, they are not the result of present statute law, nor encouraged or countenanced by lawyers. It would be presumptous in me, perhaps, to speak for that most honorable body of men, who practice in the courts of this country, or even to attempt to defend them. Yet any interested student of American Common Law, can judge what its influence would be upon those who practice it. The biography of those great men, who have guided the nation by their knowledge of law and their love of justice, confirms the thought, that lawyers, as a class, are staunch defenders of woman's rights, and vigilant sentinels over woman's virtue. Among these, however, there have been notable exceptions.

The loose and simple requirements established by American courts, have often let into this honorable profession, men who are not lawyers, but villians. Men who wear the garb of honest men, and the badge which should be borne only by lovers of equality and defenders of justice, sometimes sneak into this profession as they do

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unto every other, and too often the outside world judge the whole class by the wickedness, trickery and debauchery of the exceptions. If the lawyers of the United States had the power of deciding who should be admitted to the bar, and who should remain in the practice, there would not remain a single lawyer in the land who was known to be licentious, ungallant, or dishonest.

Lawyers may defend criminals on the system that "Every man is entitled to a fair trial," but they hate the wrong, and learn by these repeated and sad lessons the results of crime, and beware of falling into the same snare. This, it must be borne in mind, is said of lawyers as a class, and has its unenviable exceptions. Lawyers are usually defferential toward ladies in court and out of it, and any departure from such conduct is always condemned by the profession. The common law has still about it too much of the spirit of the age wherein it had its rise to encourage a faithful disciple to act otherwise than gallantly toward a lady. Show me a lawyer who, in his office, or in court behaves himself unseemly toward a lady, and I will show you a man who has not imbibed the soul of our com-

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mon law, and one who, though he may be clever at technicalities, is without either greatness in intellect or in learning. The whole culture of a law student leads him to respect woman, and to make himself her champion. So great is the influence of this legal education that it is next to an impossibility for a man in an equally balanced suit in court to prevail against a lady. She is favored at every point, and as I shall more conclusively show, is assisted by other and more powerful agencies than the lawyers interest in her behalf on one side, and his defference and kindness on the other.

The jury, too, is composed of men—a fact oftentimes of the utmost importance to a woman, whatever may be said to the contrary. Jurymen, although less biased than lawyers, do naturally, in our land, incline toward leniency when the culprit is a woman. In a suit between a man and a woman for debt or damage, the man must calculate that the jury will give her the benefit of every doubt. There is a natural kindliness in man toward a woman which does not live in his breast when he deals with men. And when he is called to say that she is telling the truth or a

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falsehood, or is guilty or not guilty, his nature as well as his breeding leans toward her side of the case.

The judge is himself a lawyer. He is supposed to hold his office by virtue of his close attention to the study of the law and his long practice of its ennobling principles. He will always enforce a courtesy toward ladies which he would not demand of counsel toward men. He is patient with a lady when he is petulent with men. He is full of mercy toward a girl and sternness toward a boy. A perusal of the sentence of boys and girls, men and women, convicted of the same offense, will satisfy any skeptical mind how far judicial minds are prejudiced in favor of women.

During one quarter's session of the criminal courts of New York, there were seven men and four women tried for the same offense and under the same circumstances, the shortest time of any one of the men was one year longer than the most extreme sentence of any one of the women. In discretionary sentences, where the judge can give a longer or a shorter term as he sees fit, the sentence of women will not, as a rule, ex

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ceed one-half the length, and never includes some of the hardships, of the sentences passed upon men.

If the woman be connected with a civil suit she has the same consideration from the bench, and anything in her favor which is not a positive variance from the rule of justice is passed to her credit. Thus with counsel on both sides disposed to favor her suit or trial, with a jury of men bred to be at least courteous to women, and a judge who mingles all the mercy with his justice which the law will bear, woman, as against a man, or in the place of a man, has a powerful and often complete advantage.

Who shall say these things should not be so? Surely, no lawyer will be found to advocate a change. Women should be the favored one. Nature, civilization, Christianity, and the chivalry of the law, as it comes to us from knights of English feudal ages, all combine to impress upon us the moral and religious precept that women should have more "rights" before the law than men.

That she does have more privileges in our courts, no one familiar with them can doubt.

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Consider, for a moment, how it would be if the judge was a woman, the jury composed wholly, or in part of females, and the lawyers talkative ladies. At what a disadvantage a woman would be appearing against a man; and especially so if the judge, jury and lawyers had been educated into a much higher idea of the merits and claims of manhood than their natural inclination would give them. Whenever intelligent women, after careful thought, shall demand the privileges of serving on juries and practicing at the bar, they should be admitted at once. Simple justice, shorn of other Christian virtues, would require it. A woman should have no such advantages over a man; and had he not voluntarily given them to her, he would be justified in reducing them to strict equality.

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CHAPTER II.

UNMARRIED WOMEN — UNMARRIED MEN.

"WOMEN are especial objects of the law's protection." All the standard authors upon the modern Common Law agree upon that legal maxim. The time was when the Common Law contained much of the narrowness of the Civil Law, and such barbarous ideas of female subjection, that women had none of the "rights" which they enjoy to-day. And the increasing respect for her among the law-makers, marks with its various gradations the advancement of civilization and Christianity. The regard which men have for culture, refinement, purity and Godliness is always measured by their love of women. This is seen distinctly in the various classes of society about us, as well as in distant lands. The grade of man's mental culture and moral acquirements can be safely estimated by the deference he pays to his female friends. To feel the value of true womanhood, and to appreciate its sweetness and delicacy, requires a nice and acute intellectual power. Brutes never feel it.

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Barbarous or half-civilized men never recognize it.

The laws of a land are the best indexes of the people's acquirements, and are throughout all history the standard by which we judge of national advancement in civilization and morals. We have but little reason to be ashamed of our judicial standard to-day; for the most impartial minds admit that our legal practice is more just and reasonable in its dealing with women than that of any nation or of any time mentioned in history. There is much, however, remaining for great minds to do, and for the masses to accept, before either male or female citizens can be said to enjoy perfect freedom and perfect equality. Certain, it is, however, that never has the code of any people given to woman such extraordinary privileges as have been bestowed by the judicial decisions and the statute laws of our land.

With the exception of the right to vote and hold certain political offices, there are no rights given to unmarried men which unmarried women do not possess. In the most of our own States she becomes of age three years before the man, and from that time can engage in any

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business, can make contracts, can sue in the courts, and is entitled to, and receives the same protection in person and property that is extended to male citizens under like circumstances.

If women really desire to vote and to hold political office, they should have the privilege; and I doubt not it would be given them in nearly every State, as it has been in some, on the simple request of a majority of the female population. But the spirit of our law, at present, upholds the idea that the right to vote and the heavy obligations attendant thereon, would be a burden which it would be unfair to force upon womankind while they have nothing to gain thereby. To make the laws, and to be responsible for their enforcement, is no light care to the person who appreciates his responsibility, and this should not be added to the other perplexities of woman's life, without her free and deliberate choice. Such is the sentiment of present law. If an antagonism could ever arise between the male and the female portions of mankind, or if the law which man makes for himself was not also the law for the woman, except where it gives her greater

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liberty, then would there be just reasons for introducing women into the political arena. Men and women are too closely united by the inflexable law of their Creator, to make a general antagonism of interests possible. There exist on our statute books to-day very few special laws applicable only to women, and those few are almost, without exception, framed for the purpose of conferring upon her some right or exemption from responsibility which man does not claim for himself.

Take the almost universal statute that "no woman shall be arrested for debt," and mark what a caste it creates. Man must go to a prison if he is so unfortunate as to be unlucky in his speculations, or disabled by disease, or comes to want from any cause, even though the debt in question may have been contracted to save from death his family or himself. Even in those States where they pretended to abolish imprisonment for debt, the abolition consists, in the main, of restrictions upon the manner of the debtor's incarceration. But woman,—she who wails to be the equal of man before the law,—may run through the whole list of fashionable follies on borrowed

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money and be exempt from harm. Suppose she and her brother purchase clothing to the same amount, on the same street, on the same day, and on credit. Neither pay for their apparel. The law sends him to a dungeon, while she may go to a ball, or a concert, or a watering-place, for aught the law says to the contrary.

If a man owes a woman she can put him in prison. If a woman owes a man he can — let her go. Many men are in jail because they are unable to pay their taxes. No woman suffers that hardship, notwithstanding her property is protected for her and her profits secured to her as vigilantly by the Government which demands the taxes, as they are to the men ; while in most of the States, unmarried women and widows, having only a moderate income, are not taxed at all. It women do not obtain as great wages as her male companions, or does not amass wealth with the same facility as do the men, it is not the fault of the law. In that sphere men have no legal advantage. The relation of competition to the rate of wages, or the connection between capital and labor cannot be regulated by law, and ought not to be so managed, if it were possible.

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The criminal law is very partial and favorable to women, whether married or single, and many of the States have statutes declaring certain acts to be simple misdemeanors when committed by women, which, when performed by men, are felonies deserving of long terms of imprisonment.

There are also certain crimes, for which in all justice a woman should be as responsible as a man, and in the perpetration of which, a strong woman may be more guilty than a weak man would be, for which, however, the law exempts woman from accusation, and is as silent with reference to her as if it were not possible for her to commit them. Thousands of men are in prison for long terms of years on account of criminal conduct, which, when discovered in woman, is excused or unnoticed by the law. Reverse the scale for a moment, and search through the libraries for any act of woman which is punished by even the lightest sentence, and which is overlooked or excused by the law when done by a man? No such law can be found.

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CHAPTER III.

WIVES AND HUSBANDS.

In the legal relations of man and wife to each other, and to society, we shall find most startling injustice, if we place man and woman in the same plane, and consider them as equal in every moral respect. Modern Statute Law has made a most complete reversal of the old law, and woman to-day has nearly as many legal advantages over her husband, as he had over her a century ago. Then she was theoretically his servant, and he could whip her if she was disobedient, and scourge her if she was lazy. All she possessed became his property upon their marriage, and all that he held before was still his own. At his death she was practically under guardianship, and dependent upon the property and good-will of others for her support.

Now that has become useless with age; and the new law, properly enough no doubt, has bestowed upon woman so much power and so many immunities and prerogatives, that to-day, in law, man

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is much the weaker party. Women's Rights, forsooth! Ye gods! what more could married women get, and not leave their husbands helpless, defenceless, and penniless?

If strict and simple justice was all that was required of a married man in his relations to his wife,— if there were no Christian obligations and moral impulses pressing him to be generous, as well as just, then would he allow woman equal privileges with himself, and no more. He would keep that which he acquired, and so would she. Or, if the marriage was a partnership concern, he or she, as the case might be, would have a less or larger share of the income, according to their relative importance and ability. Each would vote, each hold such offices as they were competent to fill, each control their own property, until they gave it away themselves, or their demise left it to their children. Each would be responsible for their own wrongs, their own debts, and their own living. Each would be equally liable for the maintenance of their children, and for contributions to the welfare of society. A husband would not be expected to fight his wife's battles, together with those of his own. In war, women

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should fight, or out of their own funds hire substitutes. In politics, if both could not leave the family, one should make an allowance to the other for staying at home and assuming both halves of the household and business cares. Even-handed justice demands that a man and a woman, married or single, should bear the same legal relations to each other, and be as independent of each other's control, as two men would be, living together in the same home. But how long do you dream that a man and wife could dwell together in holy, peaceful matrimony, if they acted all the while on principles of exact justice as defined by the books? Who can love by rule, or go courting by rote? Justice has no more to do with Love, in its purity and sacredness, than a triangle has with the Aurora Borealis. Yet justice is all that the law can enforce. Hence legal enactments should be kept as much as possible from interfering in so sacred and dear a relationship. Alas! the contrary is at present the fact; and modern legislation has become so incongruously mixed with the ancient law, and Acts and Resolves have crossed each other at such strange angles, that the student of to-day finds the whole subject an interminable puzzle.

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Women are found to be endowed with extraordinary powers they ought not to possess, or are subjects of inconsistent enactments which ought to be repealed. But out of this conglomerate pile of good and bad legislation, woman sums up a most decided advantage. It may be, however, no more than most men think she ought to have, but it is much more than she sometimes thinks she has.

Let me pause here, for a moment, to mention a few of the almost numberless rights which our law, as amended by the Statutes of many States, confers upon married women, and which places husbands very much at the mercy of wives, if they are punctilious and exacting.

Marriage is a contract into which no woman need be drawn against her will, or without a full knowledge of the bargain she is making. She gives up none of her rights in property which she holds, but may do with it as she pleases free from his control.

He may agree, before his marriage, to give her a fortune in consideration of the marriage, and he can pay that debt after marriage, although he contracts reckless liabilities in doing so. He may

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deed property to his wife through a third person, and she may hold it against any of his subsequent creditors. She may be worth a million, and he have nothing but his labor; yet he must support her in good style, and supply the needs of the family from his wages, without assistance from her. If both together commit a trespass, or assault, or any like misdemeanor, he is punished and she excused. Worse than that is the law whereby the husband is punished for any wrongful act of the wife in his presence, although it might have been beyond his power to prevent it. If she strikes a man, the recipient of the blows has no right to strike back unless to save his life, and her husband must pay for the damage by fine or imprisonment.

Whatever wrongs he does at her command do not make her liable to punishment. She is not compelled to support him if he starve, although she may have a competency; neither is she under legal obligation, before or after her husband's death, to supply the wants of her children.

He may be compelled to pay her debts, contracted before he ever knew her, out of his own

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capital. She cannot be put in prison for an act less than a felony, unless he is put in confinement, too. She has all her own, all its accumulation, all her wages, and, at his death, one-third of his real estate; and, usually, one-half of his personal property. She may insure his life at his expense, and the payment will go to her, free of any liability on account of his debts; but not so with his policy on her life.

She may commit adultery and live with another man, but he is compelled by law to pay her "pin money." She is not bound by law either to love, or to honor, or to obey him. She may abuse him all she pleases; but he must not strike her, or return the compliment with any show of force. If he ill-treat her, she can place him under bonds to use her kindly. He has no such remedy. She may be a vicious virago, and drive him from the house; yet he must leave her in possession, if she is strongest, and go to work to provide her a decent living. So long as she does not leave him, he must provide for her.

If he makes an agreement with her to give her a settlement in lieu of her dower, he must pay her, even though her paramour brings the action

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to compel him. She may act as his agent in some matters against his will. She may run him in debt to a considerable amount, but she is not forced to pay any bills of his contracting. If he is mean, or vicious, or cruel, he must pay for her separate maintenance; while she may be as hateful as a witch, and rich withal, and yet be free of any claim from him for separate maintenance. He is liable for her slanderous talk, even though he tries, on the spot, to prevent her speaking. She can refuse to do any kind of labor. She can waste his goods, and even burn his house before his eyes, and he is powerless. She can do business on her separate account and devote her whole time to it, as much as he does to his occupation, and more; and taking all the profits, leave the home and the children to his sole care and expense. She is responsible for nothing, not even for herself; he is for everything, even for acts and mishaps beyond his control. He cannot sell his real estate without her signature, while in many of the States, she can buy and sell real property, wholly unrestricted by his wishes or his autograph.

If she desires to get a divorce, he must pay

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her costs and other expenses in advance. She is not constrained to furnish him with any money to carry on a legal quarrel with her, no matter how wealthy she may be. After a divorce, he must support her still, if he was at fault. She pays not one penny to him if she was the offending party.

A step-father is bound to supply the necessities of his wife's children if he take them to his home. A step-mother incurs no such liability. If husband and wife separate, she has the same right to the custody of the children that he has, notwithstanding he must pay all their bills. She may sell his property to pay her expenses, but he has no such privilege with her possessions.

If a man entice away a married woman, he is imprisoned. She is nearly as often the guilty one, but suffers no penalty. There are scores of reasons which excuse a woman for deserting her husband, but not one pretext or plea which will clear him from his marital duties. As guardian, executrix, or trustee, she has the same rights that he has, and less of the liabilities.

Let me add to this abbreviated rehearsal the words of one of the latest and best authorities on American Common Law.

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* "A woman, when she is married, has contracted with a man to furnish her for life — and the children who may be born of her, during their minority — with suitable and proper sustenance; while on the other hand, she is not under obligation to work or do anything." "There is no obligation upon her; she has no burden of life to carry; her husband is bound to support her, and she has her whole separate income with which to blow up and keep up the alluring and bursting bubble of her follies." This shows what woman *may* do lawfully, not what she *does* as a rule.

Thank God, the number is few of either men or women, who demand *all* their legal rights. There is too much love, kindness, generosity and forbearance in the world, to test the width of these legal loop-holes very often. Not one married woman in a thousand, and not one man in a hundred, ever care whether women have legal "rights" or not, save as a matter of curiosity; for true matrimony knows no law but kindness, no restraint but such as Christian love imposes. If this were not so, men would be fearfully op-

Bishop's Law of Married Women.

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pressed under the present codes and rules of law. The men know, however, that they can trust their wives with all they ask for, and much more. Hence this strange indulgence by those who have held the reins of power.

But before leaving this part of my subject, I shall venture to give you one more quotation from legal authority, to show you, beyond a doubt, the accuracy of my statements on points of law.

"Of late, statutes have been enacted in the greater part of our States, giving, substantially, the privileges of a separate estate to all married women, where no ante-nuptial contract has been made, *yet casting upon them no corresponding burden.*

What they bring to the marriage remains theirs, in some of the States; what they earn becomes theirs; they can hoard all and its increase, and thus add wealth upon wealth, out of which nothing can be taken for the maintenance of themselves or their children; while their husbands, *if the law is carried out*, must, in most instances, be kept poor, and finally driven to cheating, in order to support the rich wife and her family.

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Meanwhile, the rich daughters of the poor and swindling father, brought up without the blessed discipline of toil, taught by daily example and experience to fatten on the gain of fraud,— taught to look upon a man as a tool with which a woman is to work her way to the command of wealth not honestly hers, — are candidates for matrimony in the coming time, when considerate young men — those who are fit to be husbands — will, rejecting the greater and accepting the less of two evils, abjure matrimony altogether. It is needless to say that we have here a state of things endurable only because the women, who are wives, are better than the new laws which regulate their relation to their husbands, and husband's creditors."

If women were not far, far better beings, as a class, than the law has in view, how soon would they abuse the trusts reposed in them. Again I must say, that if women exercise not all the rights to which they are entitled as Christian mothers, conscientious wives, and cultivated ladies, it is not because the law fails to give them sufficient latitude.

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CHAPTER IV.

FUTURUS ESSE.

"ALL men are scoundrels," says the author of "Every Woman Her Own Lawyer." A rather broad statement, even though the laws which then existed were more in favor of male citizens than they are now. However, if we grant the truth of that writer's proposition, and consider it as applicable to that time of woman's oppression, we can but conclude that men are angels under the new regime. Yet we hear no praise bestowed on them, even now, and I question somewhat if they deserve any. They have attempted, in a most bungling manner, to atone for past remissness by present obsequiousness.

If there is anything the feminine gender hates, it is a womanish man; and modern legislators and some supreme benches have been positively womanish. A lady desires that her husband shall be a *mental* as well as physical man. She would despise a husband who was nervous and unstable, delighting in sewing and

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cooking, gossiping, and light reading. She wants a man of strength, of determination, of bravery, of stability. It is all expressed in the words, she demands "*a real man.*" He may cull boquets for her, instead of swinging his hammer; he may draft patterns for crochet, when he should be studying his sermons; he may be acting in place of the nursery-girl, while his corn is choked with weeds; or he may be writing sonnets to her dimples, at a time when innocence and justice demand his advocacy in the courts: yet the *real woman*, with natural instincts, intelligent mental growth and feminine grace, will not love him. She admires the man whose strength of character commands the respect of others; whose integrity is as stern as his will; whose arm is able to defend her, and whose love for her has in it an affectionate deference, kindly consideration, and a heartfelt manly respect for those qualities which God has given her and kept from him, save by her companionship. She does not wish him to behave toward her as he would toward a male acquaintance. She, in fact, does not desire to be a man,—asks not the right to act like one; nor does she wish her husband to be a woman, or ex-

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ercise the right to become one. If her husband desires her to do the work of a man, she is naturally and justly indignant; yet no more so than she would be to see her husband acting and talking like a woman. God made him to embody mental strength and courage, and created her to display mental beauty and modesty. You may discuss and wrangle, you may philosophize with theological isms until the end of the world, and these trite and self-evident ideas will never be expelled from the constitution of the human mind.

Therefore, when men make laws for woman, she desires and expects those enactments to be manly statutes, appreciating her natural modesty, recognizing her intensity of feeling, and encouraging the culture of that Divine beauty which is the complement and equal of manhood's strength. It is no unreasonable demand; yet in attempting to comply with it, men have gone to a foolish and unmanly extreme. They have made woman, in many respects, a legal fool. In attempting to defeat the accusation that they have classed her with idiots and lunatics, they have given her many of the same exemptions which before the

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law gave exclusively to them. Yet the probable intention was to confer upon her privileges in recognition of her superiority.

It may be a difficult task to clear up the legal rubbish, and modify these legislative mistakes; but if it ever does come out of the discipline and culture of the coming years, I believe that the laws will then be founded upon some, if not all, of the following principles, viz.: —

1st. All men and women are created free and equal.

2nd. Man and woman are but two halves of a perfect whole. "They twain shall be one flesh."

3rd. All are morally responsible for their own wrong.

4th. The difference in their natures is not a difference in *value*, but in the *kind* of merit. He has qualities which she has not; she possesses traits and genius, he does not; they differ from each other, and yet, in their worth to the world and to God, they are equal with each other.

5th. Each should assume those duties for which each is best fitted by nature, and share the profits according to their industry and skill.

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6th. Marriage is a mutual and equal partnership, each taking an undivided one-half interest in all the other possesses or acquires, subject only to the control of the courts of equity in cases of peculiar hardships. The dissolution of that partnership should be in the same courts.

7th. Let every human being of sound and matured mind be personally responsible for his or her own criminal conduct.

8th. Let women cast ballots on such matters as a respectable number of them shall desire to have submitted to female suffrage, while the general responsibility of attending the polls shall be left with the men. So long as the men's legislation is satisfactory, women need not and should not feel the great cares which are better adapted to men.

9th. Sex, as a mere fact, should not debar any person from public office, if a constituency be found desirous of their services. "Vox populi, vox Dei."

10th. No privileged class, either of sex, wealth, or descent, should be allowed to arise or exist. All persons should have the legal *right* to be the equal of every other, *if they can.*

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It may be that the practical and complete codification of those principles in our law might disturb many present ideas of etiquette: men may be more reluctant to give up to women their seats in cars, halls, hotels and churches,—though we hope and believe not; less liberal in their provision of reserved tables, cars, and parlors, fitted up at such expense especially for ladies; less inclined to doff their hats, and less disposed to wait upon women of fashion, and far less cheerful in their toil to support a lazy wife: but certain it is that the workshop, the cellar, and the kitchen will be more happy, more healthy, and less humiliating, while the lairs of sin and woe which now abound, will become the homes of industry and modest affection. Will that glorious day ever dawn? I firmly believe that it will; for I see in every oscillation of the statutory pendulum, a nearer and nearer approach to the permanent and much-desired level.

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CHAPTER V.

THE STUMBLING BLOCKS.

How would I bring about a reform? I can hardly tell. But it is easy to say how and why it has *not* been brought about. People do not care and have not cared whether women have more legal rights or not. Nine women out of ten are as happy as they can be under any dispensation. It is a small minority who suffer from legal enactments, and a still smaller proportion who take any pains to inquire after or aid those who are more unhappy than they need be. Each unmarried lady is free from the men,— more free, often, than she would like to be, if she acknowledged to herself the chidings of the nature God gave her, — while nearly every married woman thinks that her husband is the sweetest, dearest, strongest and tenderest man in the world, and is thankful she found *him* rather than his neighbor, who, though he is good enough for that Sarah Ann he afterwards married, yet he is not just the man for her. Nine out of every ten of the married

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women love their husbands and children with such heroic devotion that the wish of either is law, and no human statute could compel them to act contrary to the desire of the loved one. It is safe to say that not more than one in one thousand of the females in our land know what the laws are which relate to women. Their law is the law of love, their statutes the impulses of a generous heart.

From such satisfied ones, notwithstanding their cares and household troubles, no interference with the laws can be expected; and especially after they have listened through a dull hour to the average advocate of woman's suffrage.

The writer's experience as a listener among the ranks of the feminine reformers, teaches him that with the exception of four, most noble women and most effective speakers, the advocates of woman's suffrage in this land do the question and their listeners more harm than good.

It avails nothing to tell the young ladies that when they get husbands they will be made to serve them in absolute slavery. Young women have too much common sense to believe it. They call the speaker a ninny, and ridicule the whole

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matter. It is no use to tell the majority of them that if the men only voted as the women would vote, there would be a m re equitable di vision of wages. They know their fathers and brothers care too much for them to vote them into low salaries. What woman will stand calmly by and hear the good intentions of her own brother and father impugned? It is also unwise, even if it were true, to tell any woman that she is ignorant and selfish, in accounting for her lack of a desire to vote.

There is no advantage in telling the ladies that they must leave off such worldly, foolish gewgaws as braids, curls, ear-rings, laces, ruffles, plaits, flowers, flounces, tucks, rings and slipper-bows; that new bonnets are a cheat and a snare, silks and satins are an unchristian waste, and everything wearable but trousers and loose jackets, skillful concoctions of Mrs. Appolyon. They know better. They know that it is a woman's duty to dress well and prettily. No one would say that a rose would be answering the end of its being if it bloomed beneath a covering of cabbage leaves. Surely it is a sin for a lovely woman to mar that divine beauty with awkward draping or inharmonious colors. God himself

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is the angels' dress-maker, and their pure white robes are neatly draped and charmingly fitted, no doubt. How would a real angel appear in blouse and trousers? Shame on such babble! The woman of to-day feels that this talk about the simplicity of dress, in the extreme often advocated, is not only nonsense, but, in practice, is a sin. The true theory of woman's dress is probably this; viz., that her apparel should be such as would grace the Venus of Milo, provided a true artist were obliged to drape that beautiful figure, to protect it from heat and from cold, and provide for a natural locomotion. Fashion often fluctuates, and sometimes passes to extremes; but in this cultivated age it gravitates toward the true standard, and so long as ladies know this, and desire to be attractive, and admire that which is lovely and modest, they won't vote, if they must go into pants and loose, straight roundabouts to do it.

It is of no use to the cause to declaim about the great birthright of the ballot,— how the men will respect the women more when each has equal political power, and that woman would then be admitted to many places of profit from which

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she is now debarred. The women know these statements to be fallacious. They recognize the fact that God's law is such that physical force and courage is with the men ; and if the women have the right to vote, it will be a mere delegated power which the men could recall whenever they saw fit. Unless women grow stronger and men weaker, the men will still possess the real political power.

The hearers know all this, and laugh at the intemperate reformers who proclaim the contrary. Hence the wheels of progress are blocked by the very hands which are laboring to move it forward. This, too, confirms the opinions of the apathetic ones, that, as so large a proportion of the race is happy as it is, it may be as well to let the matter remain undisturbed, and leave the one suffering mother or sister to work out her own destiny. Had the majority been the sufferers instead of so small a minority, how soon would a war have reversed the order! Or, could the women of the land be convinced that their leaders were not charlatans and notoriety-seekers, and feel confidence in the reports of distant woe and sorrow which they themselves do

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not see,— then would this minority of unsatisfied, oppressed and needy ones be speedily and largely reduced.

With this carelessness and ignorance on the part of the great masses, and the inconsistency and lack of shrewdness among the advocates of improvement, the true philanthropists have a hard task before them. The sad minority increases with every new statute, and women are more and more dissatisfied. Experience under the new laws discloses the fact that this tendency to make man and wife independent of each other, — to divide their interests so as to bring the welfare of each, oftentimes, in direct antagonism to the other,— is a pernicious undertaking, and productive of the very evil it is intended to prevent. Every law is contrary to reason and to the expressed will of the Almighty, which has not a more complete union of man and wife in view. All our modern legislation has had the opposite effect, while it has conferred upon women unreasonable and unjust privileges. It ought to be a part of the constitution of every State, that man and woman shall be equal before the law, and husband and wife, so long as

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both shall live, shall be joined in a legal and unlimited partnership, with all the liabilities and privileges of business partners. There will doubtless, then, be drunken, brutal husbands, and some drunken, brutal wives. There will be some parsimonious and contemptible heads of families. There will be much poverty. There will be many aching heads and hearts; perhaps as many as now. There will be fraud and wrong in abundance. But the skirts of the law will be clean, and lawyers will no longer be compelled to bear the blame. There will be less inconsistency, less temptation to commit fraud, less opportunity for domestic quarrels, and more chances of redress when either party is wronged.

To secure such laws and their execution will require the exercise of much common sense, and the expenditure of much patriotic ardor on the part of those who would lead in the movement. If female orators desire to speak to the masses, they must show that they are ready to sacrifice themselves to the cause sufficiently, so as to sink personal ambition or any desire for fame, and study only the cause and those influences which will assist in its advancement. They must not

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tack on to a good movement anything doubtful, or side issues which awaken unnecessary controversy.

Woman's suffrage and woman's equality are matters which command the respect of all thinking and honest-hearted men, whenever and wherever they are not caught in bad company. But when these questions are made to cover some wild hobby, such as bloomers, adultery, total abstinence, child-murder, free-love, infidelity, atheism, communism, abolition of capital punishment, and a score of other like issues,—then do all the honest, patriotic and modest men and women spurn the whole bundle of scandalous and disgusting ideas, and only regret that there is no well deep enough, and no law strong enough to bury the whole contemptible posse, advocates and principles alike, out of sight forever. Woman's suffrage has secured a very bad name by being found so often in bad company. Until some bad men and worse women cease to advocate it, it has no prospect of general success. "Sic eunt fata hominum."

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CHAPTER VI.

FASHIONS AND LAWS.

THERE a refashionable laws, and legal fashions; there are laws which are not fashionable, and fashions which are illegal; yet many of the agitators in this field of reform confound the two in a most ludicrous manner, and often teach the people that all *customs* are laws. The laws and the law-makers have borne much vituperation and scorn on account of customs for which they are not responsible. Lawyers will readily recognize the broad difference between custom and law, and they well know how wide are those domains of liberty on which the laws do not and cannot encroach, but where custom and fashion have free access, and in the undiscriminating eye of the multitude have the guise and form of law. Men and women obey them blindly, and the consequent hardships, oppressions and pain are laid at the door of the law; while a scream for "woman's suffrage" ascends from many sincere, but ill-advised spectators. In these somewhat

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subtle, but yet discernible distinctions, lies all the difficulties which surround these questions and mislead its advocates. Women *do* suffer wrongs, —they *do* endure hardships, — they feel unnecessary pain; and their relations to their brothers, husbands, fathers, and male friends are not what they should be. Far, far be it from me, whose mother, sister, and wife live to hear these sayings, and whose self-sacrificing lives have often guided me in these discussions, to state that women do not have a full, and too often an unequal share of the burdens of life. Ah! a glance in retrospect brings before me the shadows of dark hours, the ghosts of painful events. I could fall down at your feet, oh, thou loved ones, and worship the image of Him whom I have seen with you in the furnace of affliction. I know I should deserve a blasting curse if I should think lightly, or speak contemptuously of woman's toils and discouragements in the light of your lives!

That women are more unhappy than they should be, that men often are the oppressors, and that the sorrows of our lives are quite unequal, I quickly admit. But it is not the Common

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Law, as now administered, that makes these things so. Statutory regulations have done nearly all they can, and in strict justice, more than they should for woman. Women are, to-day, a privileged aristocracy before the law; and had God given them the physical strength of men, and the accompanying ambitions, we could not be long a free people. If the legal privileges which women can now enjoy were obtained by themselves with force, or were held by them with a power which the men could not, at any time, overthrow, then, surely, would the men of our land be the actual servants of the women, and fully subject to their command. But the truth is, that the men may legislate, that the ladies shall be Gods, — and they will be women still. The men may exempt them from toil, may give them State doweries, may bestow upon them the right to hold office, and to vote,— and yet they will be women, and the men will still be men, as the Almighty designed they should be. The same power which makes a law is competent to repeal it; and a law enfranchising women the men could repeal by force, if they found that the women were voting contrary to the interests or

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wishes of the male portion of the community. Women would be still in the same relation to the men, except the danger of being everywhere accused by opposing politicians of being ungrateful, and awakening an antagonism which does not now exist. Women can vote in any State without the slightest doubt, whenever a majority of them ask to have the burden placed on their shoulders. A burden, surely, it will be, unless, perchance, they should love their children less, be more indifferent to the welfare of their husbands, and take less pride in a pleasant and happy home.

Let us fairly, kindly, and carefully look upon this matter, and, without prejudice or bravado, discuss the importance to women of this much-abused exemption. This is a government of the people and by the people. The laws are made by persons selected with votes. Hence, voting is a means of making and changing the laws. Woman's only excuse, if she desired to vote, would be that she wished a change in the laws. Setting aside, for a moment, the hard fact that woman's ideas of what changes should be made, are, and would be, as diverse and as much op-

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posed to each other as are those of the men; and granting that all the women are Christian ladies, — another bouncer —and admitting that they would be wholly united, what change in the present administration of the law would be for woman's advantage? What hardships would she then escape which are not now self-imposed, and which are not the result of fashion and custom, uninfluenced by Statute Law? Would she devote herself to any profession now followed by the men? What law is there to prevent? She may be a doctor, a preacher, a lawyer, a farmer, a millwright, a wheelwright, a railroad conductor, a bank president, a grave-digger, a teacher, a sailor, a merchant, a truckman, an artizan, a loafer or a fop; or anything else not criminal. Custom, and the prejudices of society, especially of her own sex, would often interfere; but the law would protect her if she had the moral courage to face the other difficulties. Would she have greater educational advantages? The laws of the States deprive her of none. Private corporations, controlled by a narrow and almost contemptible prejudice, keep her out of some colleges and scientific schools into which she should be admitted. But she may found and endow

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rival corporations if she choose, and refuse to admit young men. The law has no favorites in that direction. Would she serve on School Committees? The law gives her that right in nineteen of the States, although she does not always exercise it. Would she be relieved of the sewing and cooking? The present law does not compel her to cook or sew. Would she avoid the cares of a family? She is not forced by the law to bear children, or even to marry. Would she become an orator, a writer, an inventor, or scientist? The whole sphere of literature and learning is open to her. Would she secure better wages? The law will collect for her all she bargains for. Would she enjoy better health? The law favors every effort in that direction. Would she control her own person and her own property? The law gives her that right. Would she share in the profits of her partnership of marriage? The law will, at her request, compel the husband to do her that justice. Would she govern the household and be the head of the family? The law gives her that right, with or without her husband's consent, provided, only, that she is best fitted for such a position. Would she have the liberty to go without escort to places

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of amusement? She may do so now. Would she have her husband stay at home and care for the children one-half or all of the time? He must do so now, or employ some other person to take his place there, if she leaves the household to his care. Would she be more cultivated, more moral, more pure, more holy, more charitable, more loving, more industrious, more enterprising, and more wealthy? The law of our land to-day, encourages all this, and punishes those who would prevent or hinder such progress. Where, in the the whole range of jurisprudence, is there to-day a legal barrier to woman's equality with men, or to the broadest liberty consistent with civilization and virtue?

Yet woman is hampered and embarrassed in every walk of life by customs and fashions to which she need not bow, and to which she would not succumb had she the nature of man. In that sphere, there is work in plenty for philanthropists, and in that direction they should exert their best and holiest energies. Ladies may desire to be elected to public office; and when their sex desire it, it will be granted to them, as it should have been, perhaps, before, although the mightiest

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minds of history never sought or held an office. With the exception of office-holding, all the disabilities of women, of which we have heard so much complaint, arise from custom or fashion, the barriers of which, slender as they are, in fact, are too strong for ladies' weak nerves and tiny hands.

It is a shame,— yes, a crime, under divine laws, for a woman to lace herself into clothing which makes a consumptive suicide of herself, and cripples, or demented creatures of her children. It is folly, bordering on great sin, for a woman to spend her hours in idle gossip, in reading trashy novels, in fashionable, cold-hearted calls, instead of storing her mind with useful knowledge, or instead of visiting the sick, teaching the young, or assisting in the support of herself and others. It is her duty to adorn her person neatly, appropriately and modestly, having in view her means for so doing; but, in order to be in the line of her duty, that adorning must consist of artistic ornaments, and not of disfigurements, or unnatural and distorted combinations. Is there philosophy in chignons? Is there statesmanship in humps and bustles? Are there indications of

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fitness for the duties of life, or the cares of public office, in high-heeled shoes, trailing dresses, waspish waists? Is there culture in slang phrases? Is there Christianity in bonnet worship, or, is there charity in dress parties?

Woman, as much as man, is the architect of her own fortunes. She who so far forgets her God and the highest types of beauty, as to deform in fact, or in appearance, the body which the Great Father made, has, beforehand, distorted her soul which He also gave. Were I writing of men, I could find many corresponding follies and sins; but that is no palliation or excuse for those of the women. Types of the beautiful! symbols of the heavenly messengers! marvels of natural acuteness and intuitive insight! why, in the name of all that is pure and holy, is it that so many of you are blasted in the bud? Is it the effect of barbarous laws? Once, that might have been an excuse, but it avails not in these days of man's highest civilization, and its corresponding legal enactments.

There are yet many realms of silence to be made vocal, many scientific truths to be discovered, many arts to be perfected, which require the hands and the minds of women. She

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must feel her new responsibilities. She must begin as other noble women and nearly all great men have begun, and give herself, soul and body, to the acquisition of wisdom and skill; and her very opposition and difficulties will be gain. There are free schools enough, free libraries enough, teachers enough, and natural ability enough, and the persevering will only is needed. Woman must throw off her bondage to fashion, her submission to folly, and her desire for frivolities. She must defeat the enticements of pleasure, the flatteries and censures of the men, and waste no more time in discussing rights she might have, when she appreciates and uses not the priceless liberties she now has. All prejudices, all notions of propriety, bend to genius and culture. A well-disciplined mind and a generous heart will look the lion Opinion in the eye, and move on. He will quail before her and will assail her no more. Let a woman, endowed with natural genius and assisted by years of persistent culture, appear in public in a classical and elegant apparel, how soon will she influence the fashions of those who recognize her value! Her dress, her books, her manner, her language, all have disciples and earnest followers. Why

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is it that we have so few of those? Why is it that, down through the century there come to us so few female names to grace the long list of great ones of whom we boast? Is it not because women have believed that they could be great only in the same way that men are great? Is it not because they overlook the work and acquaintance of Lucretia, Mott, Margaret Fuller, Mrs. Stowe, Miss Beecher, Miss Dickinson, Mrs. Livermore, and the half-dozen others like them, and profit not by that example and precept which has demonstrated that there is a nobility in womanhood as well as in manhood? I thus propound a question for which I have no answer. Why women do not become pre-eminent in certain spheres of science and learning, I know not. But this I do know,— that women, as a class, fall far short of the standard to which they might attain. That the same is true of many men is no answer to my queries, while it does confirm my proposition, as the lack which woman admits is not the result of disabilities under the law.

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CHAPTER VII.

TAXATION WITHOUT REPRESENTATION.

As the only basis for argument furnished by the claimants for woman's suffrage is found in that high sounding phrase — especially to American ears,— of "Representation, or no taxation," I cannot do better than to pause, for a moment, and test its strength and solidity. I believe that, in *strict justice*, every woman of mature years and understanding, should have the right to vote at every election where her interests are involved. When I say "in strict justice," I mean to apply that remark to the men as well as to the women; for woman's suffrage, with the loss of rights or privileges now held by women, which it would and should involve, will be a greater loss to the women than to the men. But as the purpose of this book is not so much to advocate or discuss woman's suffrage, as an abstract principle, as it is to show that the women now have many more rights than they give us credit for, let us con-

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sider what wrongs women suffer by this, their only deprivation ; viz., taxation without representation. I have already stated in another connection that, as a rule, single women, having little or no property, are not taxed at all, while those who own but a small capital have a portion of their possession exempt from taxation, besides the regular exemptions which apply to men and women alike. Women pay no poll-tax; so that women, as *persons*, are not taxed. A part of their *property* is taxed. Hence the question is reduced to this : is it right to tax property while the owner has no vote in the disposition of those taxes? This question with relation to woman is quite a different one from that which disturbed our forefathers in 1775. Then the taxes collected by Great Britian were to be expended elsewhere, and were not to be laid out for the tax-payer's advantage ; and *no one interested in the welfare of the tax-payers* represented them in the financial arrangements of the government. This case is a far different one.

Suppose a woman owns a lot of land in Chicago, upon which she has erected a dwelling-house. On the same street are a thousand other lots. The men of the city furnish a police force, and

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pay them to protect this woman's property from robbery, and her person from harm. They furnish her a paved street and a brick sidewalk. They take running water into her house, and gas pipes into her cellar. They give her the advantages of public libraries, cheap conveyances, free schools, with all the accompanying privileges which go with such communities. These matters have cost a large amount of money, and have given her as many conveniences, enhanced the value of her possession as much, and protected herself and her property as carefully as they have done for any voter in the city. Ought she not, in all justice, be made to pay her proportion of the public expense? On one street in that city there are said to be nine hundred and fifteen non-resident owners. Shall persons who do not live there, vote in that city, merely because they pay taxes there? or should foreigners be allowed to vote because they own land there? If property were to create the right to vote, some aliens would vote in a hundred different cities.

The "property qualification" has been tried among native male voters, and was found to be in practice, as in principle, a most dangerous and

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illiberal undertaking. We see, too, that as only about one-half of the unmarried women possess any taxable property, only one-half of them would be entitled to the ballot, on the plea of representation with taxation.

The truth is, that the ballot is founded on far different principles; and like the mandates of eternal justice, should know no rich, no poor, no high, no low. Wealth or poverty should bear no relation to the question. But if we grant that it did, none of the women would calmly and advisedly assert that their taxes would be less, their property better protected, or themselves be met with greater respect, if they voted. Their neighbor, who looks out sharply for his own, cannot tax them and relieve himself. Whatever he votes upon them, he must also take upon himself; and is thus compelled to do by them as he does by himself. If able business men, who understand these matters theoretically, and whose discipline is much more thorough than that of a woman would or could be, vote nothing for her that they do not, in equal proportion, vote for themselves; and if the Constitutions also provide that taxation shall be equal upon all, except

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reason for withholding whatever additional boon or privilege she may desire.

Woman will continue to exercise less than her "rights," and will be willing, as heretofore, to sacrifice herself for those male companions whom she loves; and man can afford to give her all she now has, and far more. Nature, and all our Christian cultivation teaches us to be generous; and a curse black as night, and as fatal as the Simoon, will rest on that era, when the men and the women demand and expect nothing more from each other than *exact justice.*

"Heaven forming each on other to depend,
A master, or a servant, or a friend,
Bids each on other for assistance call,
Till one man's weakness grows the strength of all."

—END.—

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